

### **REMARKS/ARGUMENTS**

The Applicant has carefully considered this application in connection with the Office Action and respectfully requests reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicant originally submitted Claims 1-29 in the application. In previous responses, the Applicant added Claims 30-45, amended Claims 1, 5, 7, 11, 17, 21-22, and 30-37, and cancelled Claims 21-33. In this response, the Applicants, without prejudice or disclaimer, amend Claims 1, 3, 5, 8, 11, 13, 15, 16 and 44 and cancel claims 6 and 40-43. New Claims 46 and 47 are presented for Examination. These new claims are supported, *e.g.*, by Claim 1 and page 8, line 29 to page 9, line 7 of the written description as filed. Accordingly, Claims 1-5, 7-20, 34-39 and 44-47 are currently pending in the Application.

#### **I. Applicant-Initiated Interview**

The Examiner and the Applicant's undersigned representative discussed this case in a telephone conversation on December 8. In the course of the discussion the participants discussed a draft claim amendment, the substance of which is embodied in new Claim 46. The Examiner indicated that the amendment would likely advance prosecution, subject to further search. The Applicant's undersigned representative conveys his appreciation to the Examiner for the courtesies he extended during this discussion.

#### **II. Objection to Claim 1**

The Applicant acknowledges the objection registered by the Office to word choice in Claim 1. The Applicant respectfully asserts that the substance of the objection is obviated by the

amendments to Claim 1 herewith. Accordingly the Applicant respectfully requests that the Office withdraw the objection and issue a notice of allowance for Claim 1.

### **III. Rejection of Claims 1-20 and 34-45 under 35 U.S.C. § 112, second paragraph**

The Office has rejected Claims 1 and 11 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office professes confusion regarding the phrase “report data elements associated with said access to said automation agent”. (*See* Office Action, page 4.) The Applicant respectfully asserts that any confusion regarding the cited phrase is obviated by the amendments to Claims 1 and 11 herewith.

The Office has rejected Claims 3 and 5 for insufficient antecedent basis of the term “said qualifying step.” The Applicant respectfully asserts that the rejection is obviated by the amendments to Claim 1 herewith.

The Office has rejected Claim 6 for insufficient antecedent basis of the term “said carrier signal”. This rejection is rendered moot by the canceling of this claim.

The Office has rejected Claims 2-20 and 34-45 as being dependent upon rejected Claims 1 and 11. Claims 6 and 40-43 are cancelled herewith, rendering the rejections of these claims moot. The Applicant respectfully asserts that the remaining claims are allowable under 35 U.S.C. § 112, second paragraph in light of amendments to Claims 1 and 11 herewith.

The Office notes that Claims 3, 5, 6, and 8 are in improper form because they do not further limit any previous claims. As noted above, Claim 6 is cancelled. The Applicant respectfully asserts that Claims 3, 5, and 8 properly limit at least one previous claim in light of amendments made herewith.

Accordingly, the Applicant respectfully requests that the Office withdraw the rejection of Claims 1-5, 7-20 and 34-39 and 44-45 and allow issuance thereof.

**IV. Rejection of Claims 1-2, 4, 7, 9-20 and 34-45 under 35 U.S.C. § 103**

The Office has rejected Claims 1-2, 4, 7, 9-20 and 34-45 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,636,505 to Wang, *et al.* ("Wang") in view of U.S. Patent No. 6,091,713 to Lechleider, *et al.* ("Lechleider"). Claims 40-43 are cancelled herewith, rendering the rejection of these claims moot. The applicant respectfully traverses the rejection of the remaining claims.

Amended Claim 1 includes the feature "directing a modem coupled to said personal computer to make an attempt to access a network physical layer, to determine basic success or failure of said attempt, and to report to said automation agent data elements determined from said attempt that characterize said network physical layer". The Applicant respectfully asserts that the combination of Wang and Lechleider as applied in the Office Action fails to teach or fairly suggest at least this feature. The portion of Wang cited in the Office Action refers to obtaining service provisioning information from a central terminal unit. (See column 6, lines 7-8, *e.g.*) The above-recited feature of Claim 1 does not encompass this aspect of Wang at least because Wang fails to teach data elements determined from said attempt that characterize said network physical layer. Thus the asserted combination fails to support a *prima facie* case of obviousness and the claim is allowable. Claim 11 is similarly allowable, *mutatis mutandis*.

The rejections of Claims 2, 4, 7, 9, 10, 12-20, 34-39, 44 and 45 fail to cure the deficiency of the asserted combination with respect to Claims 1 and 11. Therefore, the asserted combination fails

to teach or suggest each and every element of Claims 2, 4, 7, 9, 10, 12-20, 34-39, 44 and 45, and the *prima facie* case of obviousness of these claims fails.

The Applicant respectfully notes that the subject matter of cancelled Claim 40, which is included in amended Claims 5 and 15, and new Claim 46, is neither taught nor suggested by the combination of Wang and Lechleider as applied in the in the Office Action. The Office Action asserts that "Wang discloses the conversion method as recited in claim 1, wherein said data elements include a signal strength or an error code related to said access." (*See* page 10.) The Applicant is unable to find any teaching of the subject matter of Claim 40 in the cited portion of Wang, and the Office does not provide any reasoned argument that this portion teaches or suggests this feature. Without such reasoned argument, combination as applied is insufficient to support a *prima facie* case of obviousness of the subject matter of claim 40. Therefore, Claims 5, 15 and 46 are additionally allowable because they include subject matter neither taught nor suggested by the references as applied.

The Applicant respectfully notes that the subject matter of cancelled Claim 42, which is included in amended Claims 3 and 13, and new Claim 47, is neither taught nor suggested by the combination of Wang and Lechleider as applied in the in the Office Action. The Office Action asserts that "Wang discloses the conversion method as recited in claim 1, wherein said determining includes using a narrowband modem to contact a DSL qualification server to test a physical line outside the scope of said broadband communication network." (*See* page 10.) The Applicant is unable to find any teaching of the subject matter of Claim 42 in the cited portion of Wang, and the Office does not provide any reasoned argument that this portion teaches or suggests this feature. While the cited portion does discuss remote access using a narrowband modem, the Applicant is

unable to find any teaching or suggestion of the addition feature of Claim 42, e.g., “contact a DSL qualification server to test a physical line outside the scope of said broadband communication network.” Without any reasoned argument that the cited portion of Wang teaches this additional feature, the combination as applied is insufficient to support *a prima facie* case of obviousness of the subject matter of claim 42. Therefore, Claims 3, 13 and 47 are additionally allowable because they include subject matter neither taught nor suggested by the references as applied.

Accordingly, Claims 1-2, 4, 7, 9-20 and 34-39, 44 and 45 are allowable under 35 U.S.C. § 103(a). The Applicant therefore respectfully requests that the Office withdraw the rejection of these claims and provide a notice of allowance therefor.

#### **V. New Claims 46 and 47**

New Claims 46 and 47 are presented herewith for examination. Claim 46 includes the feature, e.g., “directing a modem coupled to said personal computer to make an attempt to detect a carrier signal from said network and to detect data elements including a signal strength or an error code associated with said attempt”. Claim 47 includes the feature, e.g., “directing a narrowband modem coupled to said personal computer to contact a DSL qualification server to test a physical line outside the scope of said broadband communication network, and collecting subscriber loop characteristics associated with said physical line”. The Applicants respectfully assert that by virtue of these recited portions, Claims 46 and 47 each include at least one element or limitation that is neither taught nor suggested by the references of record.

The Applicant notes that Claims 46 and 47 respectively include elements of cancelled Claims 40 and 42. As set forth above, the references of record as currently applied fail to teach or suggest

these elements. Therefore, Claims 46 and 47 are allowable at least because the references as applied fail to support a *prima facie* case of obviousness of these claims.

## **VI. Conclusion**

In view of the foregoing amendment and remarks, the Applicant now sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-5, 7-20, 34-39 and 44-47.

The Applicant requests the Examiner of record to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

**HITT GAINES, P.C.**

A handwritten signature in black ink, appearing to read "Andrew R. Ralston", is written over the printed name.

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